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November 30, 1993

Mr. William F. Caton  
Acting Secretary,  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Via Messenger

Re: PP Docket No. 93-253

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Dear Mr. Caton:

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Submitted herewith on behalf of the Association of Independent Designated Entities ("AIDE") are an original and four (4) copies of its Reply Comments with respect to the above docket.

Kindly contact this office directly with any questions or comments concerning this submission.

Respectfully submitted,

*William J. Franklin*

William J. Franklin  
Attorney for the Association  
of Independent Designated  
Entities

Encs.

cc: Association of Independent Designated Entities  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Section 309(j) )  
of the Communications Act )  
 )  
Competitive Bidding )

PP Docket No. 93-253

To: The Commission

REPLY COMMENTS OF THE ASSOCIATION OF  
INDEPENDENT DESIGNATED ENTITIES

The Association of Independent Designated Entities ("AIDE"), by its attorney and pursuant to Section 1.415 of the Commission's Rules, hereby replies to certain of the comments filed with respect to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1/</sup>

AIDE's Comments discussed the issues raised in the NPRM as they affect small businesses, rural telephone companies, and businesses owned by members of minority groups and women (defined in the NPRM as "Designated Entities").<sup>2/</sup> Certain of AIDE's Comments discussed matters which drew wide-spread discussion from the other parties,<sup>3/</sup> and those topics will not be further discussed.

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<sup>1/</sup> 8 FCC Rcd \_\_\_\_ (FCC 93-455, released October 12, 1993) ("NPRM").

<sup>2/</sup> See NPRM, ¶160 & nn.168-69.

<sup>3/</sup> Those topics were the definition of "designated entities" (AIDE Comments at 3-4), the appropriate preferences for designated entities (id. at 7-9), and the preferred order of PCS-market auctions (id. at 15-16).

In other areas, AIDE's Comments stood virtually alone in raising important regulatory considerations for the Commission's consideration. These were the following topics:

- Section 309(j)(7) prohibits the Commission from basing its auction decisions on any anticipated revenue maximization.<sup>4/</sup>
- Section 309(j) prohibits the Commission from requiring substantial, cash up-front payments from designated entities.<sup>5/</sup>
- The Commission should not review the financial qualifications of any application selected by auction.<sup>6/</sup>
- The Commission should eliminate needless procedural requirements for the auction process.<sup>7/</sup>
- The Commission's proposed auction procedures will not work for non-filing window applications, e.g., Part 22 paging applications filed under a 60-day cut-off deadline.<sup>8/</sup>
- The Paperwork Reduction Act of 1986 prohibits the Commission from accepting Notice of Intention to Bid forms prior to OMB approval thereof.<sup>9/</sup>

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<sup>4/</sup> AIDE Comments at 4-5.

<sup>5/</sup> Id. at 6-7 & n.7. Nor should the Commission automatically keep the 20% bid deposit as a penalty for dismissal of every winning bidder's application.

<sup>6/</sup> Id. at 9-10. As applied to PCS, MCI reached the same conclusion as AIDE. See Comments of MCI Telecommunications Corporation at 19.

<sup>7/</sup> Id. at 10-13. AIDE suggested far simpler procedures for assuring that each auction produces an acceptable winning bidder (i.e., by ranking bidders in order and keeping the auction "open" until Commission action on the auctioned authorization is final); verifying the identity of each applicant's bidder; acceptance of cashier's checks for bid-qualification purposes; and providing sufficient time for the preparation of long-form applications.

<sup>8/</sup> Id. at 13 n.17.

<sup>9/</sup> Id. at 13-14.

- Equity requires that the Commission only collect interest on installment bids when it can pay interest on deposits and bid-qualification payments.<sup>10/</sup>
- The Commission failed to satisfy the requirements of the Administrative Procedure Act and Section 1.413(c) of its Rules in "proposing" PCS procedural rules.<sup>11/</sup>

Thus, the Commission should carefully focus on AIDE's Comments in these areas, as well as any Reply Comments thereto.

AIDE's last point -- that the Commission failed to propose PCS procedural rules with the required amount of detail -- merits one final comment. As of November 15, ITS (the Commission's copy contractor) reported that one-hundred ninety (190) parties had filed Comments in this proceeding. Of those 190 parties, AIDE found that only one (1) -- MCI -- commented on the Commission's "proposed" PCS procedural rules, and MCI's discussion on this topic was limited to slightly over one (1) typed page.<sup>12/</sup> In

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<sup>10/</sup> Id. at 14-15.

<sup>11/</sup> Id. at 16-18.

<sup>12/</sup> See Comments of MCI Telecommunications Corporation at 18-19. This paucity of comment should be compared with the detailed proposals, extensive comments, and exhaustive discussions of those comments in other recent proposed and final revisions of various land-mobile rules. See, e.g., Personal Communications Services, 8 FCC Rcd \_\_\_\_ (FCC 93-451, released October 22, 1993) (GEN Dkt. No. 90-314) (73 parties produced 61-page decision); NPRM, supra (63-page proposal for auction rules); Regulatory Treatment of Mobile Services, 8 FCC Rcd \_\_\_\_ (FCC 93-454, released October 8, 1993) (Notice of Proposed Rulemaking) (GN Dkt. No. 93-252) (32-page proposal); Replacement of Part 90, 7 FCC Rcd 8105 (1992) (Notice of Proposed Rulemaking) (PR Dkt. No. 92-235) (419-page proposal); Personal Communications Services, 7 FCC Rcd 5676 (1992) (Notice of Proposed Rulemaking) (GEN Dkt. No. 90-314) (97-page proposal); Revision of Part 22, 7 FCC Rcd 3658 (1992) (Notice of Proposed Rulemaking) (CC Dkt. No. 92-115) (98-page proposal); Cellular Unserved Areas, 6 FCC Rcd 6185 (1991) (First Report and Order and Memorandum Opinion and Order on Reconsideration) (continued...)

other words, the Commission's failure to give adequate notice of its intentions for PCS procedural rules yielded a silent record. The Commission must issue a Further Notice of Proposed Rulemaking before it can adopt PCS procedural rules.

#### CONCLUSION

Accordingly, the Association of Independent Designated Entities respectfully requests that the Commission modify its proposed competitive bidding rules as set forth in AIDE's Comments and herein.

Respectfully Submitted,

#### ASSOCIATION OF INDEPENDENT DESIGNATED ENTITIES

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Its Attorney

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<sup>12/</sup>(...continued)  
tion)(CC Dkt. No. 90-6)(35 commenting parties produced an 87-page decision); 220-222 MHz Band, 6 FCC Rcd 2356 (1991)(Report and Order)(PR Dkt. No. 89-522)(69 commenting parties produced a 35-page decision); Revision of Part 22, 95 FCC 2d 769 (1983)(Report and Order)(CC Dkt. No. 80-57)(23 commenting parties produced a 196-page decision). Each of those proceedings illustrates the amount of notice required for the proposal and adoption of PCS procedural rules.

**CERTIFICATE OF SERVICE**

I, Andrea Kyle, a secretary in the law firm of William J. Franklin, Chartered, hereby certify that a copy of the foregoing Reply Comments of the Association of Independent Designated Entities was mailed, first-class postage prepaid, this 30th day of November, 1993, to the following:

Larry Blosser, Esq.  
Donald J. Elardo, Esq.  
MCI Telecommunications Corporation  
1801 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

*Andrea Kyle*

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Andrea Kyle